



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee solicits comment on the following proposals by February 1, 2016. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a complete re-draft of the insanity instruction, M Crim JI 7.11, in order to remove repetitive language and to eliminate language that unfairly over-emphasized a defendant's burden of proving insanity. The current version of the instruction is presented in strikethrough since it will be deleted if the new instruction is adopted. The proposed instruction is entirely underlined since much of its language and organization is new.

M Crim JI 7.11 Legal Insanity; Mental Illness; Intellectual Disability; Burden of Proof

~~(1) — The defense of legal insanity has been raised in this case. That is an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence. That means the defendant must satisfy you by evidence that outweighs the evidence against it that [he / she] was legally insane when [he / she] committed the [act / acts] constituting the offense. The law excuses a person who is legally insane at the time of a crime; but it is very important for you to remember that [mental illness / intellectual disability] and legal insanity are not the same. A person can be [mentally ill / intellectually disabled] and still not be legally insane.~~

~~(2) — Before you may consider the legal insanity defense, of course, you must be convinced beyond a reasonable doubt that the defendant committed [the alleged act / each of the alleged acts]. If you are, you should consider the defendant's claim that [he / she] was legally insane at the time.~~

~~(3) — When you deliberate, you must consider separately whether the defendant was [mentally ill / intellectually disabled] and whether [he / she] was legally insane. You must use the definitions I gave you. I will repeat those definitions and then describe what you should do.~~

~~(4) — "Mental illness" is defined by law as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.~~

~~(5) —“Intellectual disability” means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.[†]~~

~~(6) —To be legally insane, a person must first be either mentally ill or intellectually disabled, as I have defined those conditions. But that is not enough. To be legally insane, the person must, because of [his / her] mental illness or intellectual disability, lack substantial capacity either to appreciate the nature and quality or the wrongfulness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law.~~

~~(7) —To decide whether the defendant was legally insane at the time of the crime, you should go through the following two steps:~~

~~(8) —Step one. Are you satisfied that the defendant has established, by evidence that outweighs the evidence against it, that [he / she] was [mentally ill / intellectually disabled] at the time of the crime? Unless you are so satisfied, [he / she] was not legally insane. On the other hand, if the defendant has proved that [he / she] was [mentally ill / intellectually disabled] you must go on to the next step.~~

~~(9) —Step two. Are you also satisfied that the defendant has established by evidence that outweighs the evidence against it that [he / she] lacked the substantial ability either to appreciate the nature and quality or the wrongness of [his / her] conduct or to conform [his / her] conduct to the requirements of the law [he / she] is charged with violating?~~

~~(10) —If the defendant has proven both step one and step two, you must find [him / her] not guilty by reason of insanity. However, if [he / she] has failed to prove either or both steps, [his / her] claim of legal insanity fails.~~

Use Note

[†]The court may provide the jury with a definition of “adaptive skills” where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in 1 or more of the following areas:

- ~~(a) Communication~~
- ~~(b) Self care~~
- ~~(c) Home living~~
- ~~(d) Social skills~~
- ~~(e) Community use~~
- ~~(f) Self direction~~
- ~~(g) Health and safety~~
- ~~(h) Functional academics~~
- ~~(i) Leisure~~
- ~~(j) Work~~

[AMENDED] M Crim JI 7.11 Legal Insanity; Mental Illness; Intellectual Disability; Burden of Proof

(1) The defendant says that [he / she] is not guilty by reason of insanity. A person is legally insane if, as a result of mental illness or intellectual disability, he or she was incapable of understanding the wrongfulness of his or her conduct, or was unable to conform his or her

conduct to the requirements of the law. The burden is on the defendant to show that [he / she] was legally insane.

(2) Before considering the insanity defense, you must be convinced beyond a reasonable doubt that the defendant committed the [crime / crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that / those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant's claim that [he / she] was legally insane.

(3) In order to establish that [he / she] was legally insane, the defendant must prove two elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the elements is true.

(4) First, the defendant must prove that [he / she] was mentally ill or intellectually disabled.¹

(a) "Mental illness" is defined by law as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.

(b) "Intellectual disability" means significantly subaverage intellectual functioning that appeared before the defendant was 18 years old and impaired two or more of [his / her] adaptive skills.²

(5) Second, the defendant must prove that, as a result of [his / her] mental illness or intellectual disability, [he / she] either lacked substantial capacity to appreciate the nature and wrongfulness of [his / her] act, or lacked substantial capacity to conform [his / her] conduct to the requirements of the law.

(6) You should consider these elements separately. If you find that the defendant has proved both of these elements by a preponderance of the evidence, then you must find [him / her] not guilty by reason of insanity. If the defendant has failed to prove either or both elements [he / she] was not legally insane.

Use Note

¹ This paragraph may be modified if the defendant is claiming only one aspect of this element.

² The court may provide the jury with a definition of "adaptive skills" where appropriate. The phrase is defined in MCL 330.1100a(3) and means skills in 1 or more of the following areas:

- (a) Communication
- (b) Self-care
- (c) Home living
- (d) Social skills
- (e) Community use
- (f) Self-direction
- (g) Health and safety
- (h) Functional academics

- (i) Leisure
- (j) Work.